

REMARKS/ARGUMENTS

Claim 1 is amended to more clearly define the subject matter of the invention and thereby place all of the claims remaining in the application in condition for allowance. Claims 2 and 3 are dependent on claim 1 and are believed to be allowable. Claims 4-8 have been indicated as being allowable if rewritten in independent form to include the limitations of the parent claims and all of the intervening claims. Claim 4 has been cancelled and rewritten in independent form as new claim 21. The allowance of claims 9-16 is noted with appreciation. Claims 17-20 have been withdrawn from consideration. Thus, claims 1-3, 5-16, and 21 are pending in the present application.

Moreover, the specification is amended herein to correct matters of a grammatical and typographical nature.

No new matter has been presented by the instant amendment.

In view of the outstanding Office Action being made final, every attempt has been made to remove any issues remaining in the application and to place all the claims in condition for allowance.

Entry of this Amendment is respectfully requested. It is also respectfully requested that the Examiner reconsider the present application and claims as currently pending in view of the following remarks.

Allowable Subject Matter

The Office Action objected to claims 4-8 as being dependent upon a rejected base claim, but indicated that such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

This Amendment rewrites claim 4 in independent form as new claim 21 to include all the limitations of former claims 1-4. Claim 5 now depends from claim 21.

Accordingly, claims 21 and 5-8 should now be allowable.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-3 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent 3,089,248 to Haggar. Applicants respectfully assert that the claims are not anticipated by Haggar and therefore traverse the rejection of claims 1-3 based on the following argument.

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the claimed invention is distinguishable over the cited reference and, as a result, the cited reference fails to anticipate the claimed invention. In addition to the *Lindemann* test of anticipation, the “identical invention must be shown in as complete

detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

With respect to the rejection of claim 1, the Haggar reference fails to disclose each and every element as arranged in the claim. Applicants' claim 1 recites, *inter alia*, a machine tool monitoring fixture for monitoring the accuracy of the location of a machine tool spindle that is movable in an arc about a spindle trunnion axis. The fixture comprises blocks that are mounted along an arc circumscribed by a radius about the spindle trunnion axis. Further, the blocks have flats with normals that are parallel to the spindle trunnion axis.

Nowhere in the Haggar reference is there any disclosure regarding a fixture for monitoring the accuracy of the location of a spindle that is movable in an arc about a spindle trunnion axis, wherein the fixture comprises blocks mounted along an arc circumscribed by a radius about the spindle trunnion axis, and wherein the blocks have normals that are parallel to the spindle trunnion axis. Haggar discloses a plate 10 having a series of grooves 12 and 14, and four spaced posts 22, 24, 26 and 28. The Haggar device is used as a matrix for determining cuts on pattern cams.

Haggar has nothing at all to do with a fixture for monitoring the accuracy of the location of a spindle that is movable in an arc about a spindle trunnion axis, wherein the fixture comprises blocks mounted along an arc circumscribed by a radius about the spindle trunnion axis, and wherein the blocks have normals that are parallel to the spindle trunnion axis. In Haggar, there is no spindle trunnion axis, and there are no flat surfaces with normals that are parallel to a spindle trunnion axis.

Based upon the above, Applicants respectfully submit that the Haggar reference does not disclose each and every element of Applicants' claim 1. Therefore, in applying the test for anticipation as set forth above in *Lindemann*, Haggar does not anticipate independent claim 1.

With regard to dependent claims 2 and 3, under principles of claim dependency and for at least the reasons stated above, Haggar does not anticipate dependent claims 2 or 3. Accordingly, reconsideration and withdrawal of the rejection of claims 1-3 under 35 U.S.C. § 102 is respectfully requested.

CONCLUSION

In view of the foregoing remarks, the Applicants respectfully submit that the claims now remaining in this case are in proper form, define patentably over the cited references, and are all allowable. Applicants, therefore, respectfully request that the Examiner's rejections under 35 U.S.C. § 102 be reconsidered and withdrawn, and that a formal and timely Notice of Allowance of this application be issued.


Every attempt has been made to place the claims in condition for allowance and it is respectfully asserted that there are no further issues, formal or substantive, that remain for prosecution. Formal allowance of the application is, therefore, respectfully solicited. If the Examiner is not persuaded that all issues are resolved, the undersigned respectfully requests that the Examiner initiate a telephone interview to enable an attempt to be made to resolve any remaining issues. Otherwise, in the event the Examiner is not persuaded

of the patentability of the claims he is respectfully requested to enter this amendment for the purposes of appeal.

If the Examiner has any questions with respect to any matter now of record, the Applicants' attorney may be reached at the telephone number below. Please grant any required extensions of time and charge any other fees due in connection with new claim 21 or otherwise in connection with this amendment, to Deposit Account No. 50-0852. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

REISING, ETHINGTON, BARNES, KISSELLE, P.C.

A handwritten signature in cursive script, appearing to read "Brian L. Ribando".

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